

reflecting correspondence to him from the Biby firm, id. at 8;
see TDS/USCC Ex. 1, Tab E.

96. Finally, the only La Star matter in which Mr. Goehring was substantively involved was openly reflected in declarations that were at issue and were part of pleadings filed in the La Star proceeding and served on opposing counsel. In February 1988, in connection with a petition to deny La Star's application filed by NOCGSA, Mr. Goehring was asked by Mr. Belendiuk to review the sufficiency of the construction and operating cost estimates in La Star's 1987 amendment. TDS/USCC Ex. 7, ¶ 12. He signed an affidavit attesting to the sufficiency of La Star's estimated costs on February 29, 1988, and La Star filed the affidavit. Id.^{85/} He also prepared and signed a follow-up declaration that La Star likewise filed with the Commission. TDS/USCC Ex. 7, ¶ 14. This was the principal task Mr. Goehring performed for La Star, and it was a matter of record at the Commission. The time he spent on that task -- reviewing La Star's cost estimates and drafting or reviewing his resulting affidavit and declaration -- represented the great

^{85/} In his July 1990 La Star deposition, Mr. Goehring also described his review of La Star's cost estimates in connection with answering BellSouth's petition to deny. TDS/USCC Ex. 7, Tab C, pp. 22-23, 31-33. In his August and September 1990 declarations, he further noted his review of La Star's cost estimates and the resulting preparation and submission of a supporting declaration. TDS/USCC Ex. 7, Tab D, p. 2 ¶ 1; Tab E, p. 4 ¶ 1.

majority of the total time he spent on the La Star project up until he testified at the hearing in 1991. Id.

97. Mr. Goehring's lack of intent to conceal these activities also is confirmed by a review of the structure of his August and September 1990 declarations. Those declarations clearly were designed to compare and contrast the work he typically performed for USCC with the limited assistance he was asked to provide to La Star.

98. The declarations thus began by identifying Mr. Goehring's typical activities at USCC. TDS/USCC Ex. 7, Tab D, p. 1 ¶ 2, Tab E, p. 1 ¶ 1. These activities included system configuration, determination of cell site locations and tower heights, and negotiation of interconnection agreements. Id. As detailed above, Mr. Goehring made none of these decisions for La Star. TDS/USCC Ex. 7, Tab D, p. 1 ¶ 3, Tab E, p. 1 ¶ 2. The accuracy of the contrast between his USCC activities and his La Star activities is undisputed.

99. The next paragraph indicated that Mr. Goehring played no role in the selection of La Star's engineer. TDS/USCC Ex. 7, Tab D, p. 1 ¶ 3, Tab E, p. 1 ¶ 2. That paragraph contrasts with his activities at USCC, where as director of engineering he selected its outside engineer. Indeed, as Mr. Goehring explained in this proceeding, the few brief

conversations he had with Mr. Peabody relating to La Star in 1987 and 1988 stand in sharp contrast to the almost daily contact he had with USCC's outside engineering consultants during the same period. TDS/USCC Ex. 7, ¶ 5.

100. The next paragraph of Mr. Goehring's declarations indicated that he played no "role" in the engineering or design of La Star's cellular system, its 1987 amendment or its 1988 interim operating authority application. TDS/USCC Ex. 7, Tab D, p.1 ¶ 4, Tab E, p. 1 ¶ 3.^{86/} The statement again clearly differentiated his limited activities for La Star from his work at USCC, where he was responsible for all the engineering and design work.

101. One paragraph later, the declarations stated that no engineer at USCC or TDS "did any work or provided any engineering services" on behalf of La Star. TDS/USCC Ex. 7, Tab D, p. 2, ¶ 2, Tab E, p.2, ¶ 2. Because the declaration on its face identified various tasks that Mr. Goehring performed on behalf of La Star, it is clear that he meant to use the word "work" to connote his typical engineering work for USCC. As he explained, in this proceeding, "[t]here was a big difference in my mind between the comprehensive engineering, planning and design work that I ordinarily did when developing and building

^{86/} The testimony of Messrs. Biby and Peabody that they did La Star's engineering and design work confirms the candor of this statement. See supra, ¶¶ 95-98.

USCC's cellular systems and the type of help that I was asked to give on the La Star project." TDS/USCC Ex. 7, ¶ 22.

102. Mr. Goehring has acknowledged he could have been more qualified with respect to the word "work." Id. The undisputed facts nevertheless demonstrate that the substance of his testimony regarding his lack of involvement in preparing the engineering portions of La Star's filings was accurate and that he had no intent to conceal his activities from the Commission.

103. Richard Goehring's Contacts With The Biby Firm. Likewise, Mr. Goehring did not misrepresent facts or lack candor regarding his contacts with Richard L. Biby and the Biby firm. The Bill of Particulars specifically identifies two separate issues:

- (1) Mr. Goehring's hearing testimony that (a) he received various documents and correspondence from the Biby firm relating to La Star because USCC had agreed to pay the invoices for Mr. Biby's firm, B/P at 24, and (b) his involvement was limited to ensuring the charges were reasonable, B/P at 25; and
- (2) Mr. Goehring's August and September 1990 declaration testimony that he "did not work with Richard L. Biby on the La Star project." B/P at 13

104. First, with respect to the statement that "I have never worked with Richard L. Biby on the La Star project," Mr. Goehring explains that he does not recall ever talking with Biby personally about La Star, much less working with him on the

project. TDS/USCC Ex. 7, ¶¶ 26-27. Mr. Biby similarly does not recall talking personally with Mr. Goehring about the La Star project. TDS/USCC Ex. 5, ¶ 11. Because both Mr. Goehring and Mr. Biby have confirmed that they did not talk personally about the La Star project, it is undisputed that Mr. Goehring's testimony in the La Star proceeding was accurate in this respect.

105. Mr. Goehring did speak at times with Mr. Peabody of the Biby firm, and he did receive correspondence and materials related to La Star from that firm. But he clearly could have had no intent to conceal those facts when he submitted his August 1990 Declaration because he had already disclosed those facts in his deposition in the La Star proceeding just one month earlier. TDS/USCC Ex. 7, Tab C, pp. 8, 12. Moreover, he had participated in the pre-deposition document production, id., p. 8, in which he personally turned over documents that on their face reflected correspondence between the Biby firm and Mr. Goehring, TDS/USCC Ex. 1, ¶ 25 and Tab E, pp. 1-3, 5-8, & 22-23. Those disclosures conclusively negate the possibility that Mr. Goehring intended to make it appear that he had "no contact or interaction" with the Biby firm regarding La Star.

106. Both Mr. Goehring and Mr. Peabody testified here that their infrequent and brief conversations about La Star

involved Mr. Goehring merely responding to Peabody's requests for information or assistance. TDS/USCC Ex. 7, ¶¶ 15-16; TDS/USCC Ex. 6, ¶¶ 14-15. Mr. Goehring spent very little time looking at the La Star-related materials he received from the Biby firm and did not review them substantively. TDS/USCC Ex. 7, ¶ 11. As described above, his contacts with the Biby firm were markedly different from his typical interactions with USCC's regular outside engineering consultant. TDS/USCC Ex. 7, ¶ 4. This difference clearly establishes a reasonable basis for his belief that his limited interactions with the Biby firm did not rise to the level of engineering work, and thus did not need to be mentioned in his August and September 1990 declarations.

107. Mr. Goehring, Mr. Biby and Mr. Peabody also testified here that Mr. Goehring did not ask that La Star materials be sent to him. TDS/USCC Ex. 7, ¶¶ 10, 11.^{87/} Mr. Biby sent these materials on his own initiative as a professional courtesy "because USCC was paying the bills for our services and because Mr. Goehring was the one responsible for authorizing payment." USCC/TDS Ex. 5, ¶ 9. In some cases, Mr. Belendiuk asked the Biby firm to send copies of materials to Mr. Goehring. TDS/USCC Ex. 5, ¶ 9.^{88/} During the period 1987-1988, Mr. Goehring customarily received between four to six inches of

^{87/} See also TDS/USCC Ex. 5, ¶ 9; TDS/USCC Ex. 6, ¶ 14.

^{88/} Examples of these materials include Bureau Exhibits 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39.

mail a day, much of it engineering in nature that required his detailed review. Id. ¶ 11. When he received materials from the Biby firm related to La Star, he typically read only enough to determine that they pertained to La Star, and then simply added them to a pile of La Star documents he kept on his credenza. Id. ¶ 11.^{89/}

108. Most importantly, both Mr. Biby and Mr. Peabody confirmed that Mr. Goehring never acted on any of the material he received from them by giving directives or orders of any kind. Mr. Biby testified that Mr. Goehring never asked to be kept informed of what the Biby firm was doing for La Star, never sought to intrude on their work for La Star and never called to make suggestions about their work for La Star. TDS/USCC Ex. 5, ¶ 9. Similarly, Mr. Peabody confirms that Mr. Goehring never purported to direct Mr. Peabody's work on the La Star project or instruct him what to do. TDS/USCC Ex. 6, ¶ 16.

109. The Involvement of USCC's Tom Gilliland. The Bill of Particulars cites Mr. Goehring's testimony regarding the involvement of his staff assistant Tom Gilliland as raising a possible issue of candor. Specifically, Mr. Goehring testified

^{89/} In response to a request from Mr. Belendiuk, Mr. Goehring did ask Mr. Peabody to forward a copy of La Star's cost estimates proposed in its 1987 amendment. TDS/USCC Ex. 7, ¶ 12. Mr. Goehring needed that information to prepare his affidavit concerning NOCGSA's allegation that La Star lacked sufficient funds to build its proposed system. Id.

in the La Star proceeding that no USCC engineers worked on La Star's engineering, B/P at 6, and that while Mr. Gilliland had assisted him in preparing an affidavit answering NOCGSA's allegations, Mr. Gilliland did no work related to La Star's application, B/P at 7.^{90/} When it is understood that Mr. Goehring simply was not aware of everything Mr. Gilliland did, Mr. Goehring's testimony was candid and, as far as he knew, accurate.

110. As described above, see supra ¶ 96, in February 1988, in response to NOCGSA's petition to deny La Star's application, Mr. Goehring was asked to review La Star's construction and operating cost estimates. TDS/USCC Ex. 7, ¶ 12. He asked Tom Gilliland, the only other engineer on his staff, to price out La Star's proposed system based on USCC's actual experience in constructing cellular systems. Id. He then reviewed the information generated by Mr. Gilliland, concluded that La Star's cost estimates were reasonable and signed an affidavit to that effect on February 29, 1988. Id.

111. Prior to appearing in Washington to testify at the La Star hearing, Mr. Goehring did not know that Mr. Gilliland had done anything else with respect to La Star.

^{90/} Mr. Goehring also testified in his August and September 1990 declaration testimony that "[t]o the best of my knowledge, no engineer at USCC or Telephone & Data Systems, Inc. did any work or provided any engineering services to or on behalf of La Star." B/P at 13-14.

TDS/USCC Ex. 7, ¶ 24. During his cross examination at the hearing, Mr. Goehring learned for the first time that Mr. Gilliland might have performed some other tasks on the La Star matter. He subsequently learned that Mr. Gilliland apparently assisted Mr. Peabody directly with La Star's budget for the 1988 Application for Interim Authority and some cell site option renewals. Id.^{21/} Mr. Goehring, however, had not assigned those additional tasks to Mr. Gilliland and did not know anything about them when he testified at the La Star hearing in January 1991. Id.

112. Prior to executing his August and September 1990 declarations, Mr. Goehring already had disclosed what he knew about Tom Gilliland's involvement in the La Star matter. Because he did not then know that Mr. Gilliland had helped prepare La Star's budget, he certainly did not intend to conceal that from the FCC. Indeed, given what he had previously disclosed about Mr. Gilliland's assistance in his La Star deposition, there is every reason to credit Mr. Goehring's

^{21/} Mr. Peabody testified that Mr. Gilliland did, in fact, provide the Biby firm with assistance in preparing the budget to be proposed in La Star's interim system application. TDS/USCC Ex. 6, ¶ 13. Mr. Peabody gave Mr. Gilliland a list of the equipment categories and general types of equipment to be included in each category and asked Mr. Gilliland to estimate the costs based on USCC's experience in constructing systems. Id. Mr. Peabody believed he was referred to Mr. Gilliland by Mark Krohse of USCC. Id. "Although Mr. Goehring was our designated principal technical contact at USCC, my best recollection is that most of my contact was actually with Mark Krohse and Tom Gilliland, not Mr. Goehring." Id. ¶ 14.

statement here that "If I had known of Mr. Gilliland's involvement [in La Star budgeting], I would have disclosed it just as I had disclosed Mr. Gilliland's assistance to me in preparing my affidavit in response to BellSouth's filing challenging the adequacy of La Star's cost estimates." TDS/USCC Ex. 7, ¶ 24.

113. Finally, Mr. Goehring, testified that if USCC or La Star stood to be harmed by his testifying truthfully in the La Star proceeding, he was unaware of it. Nobody had suggested to him that the facts were incriminating, that there was something to hide, or that he should shade his testimony in any way. TDS/USCC Ex. 7, ¶28. USCC's attorneys, Alan Naftalin and Herbert D. Miller, Jr., never said or suggested that to Mr. Goehring or any other USCC witness. TDS/USCC Ex. 11, ¶25; TDS/USCC Ex. 10, ¶57. Thus, he had absolutely no motive to mislead the Commission in anything he said.

114. Conclusion. The record in this proceeding compels a finding that Richard Goehring was candid and truthful in his testimony, with no intent or motive to mislead the Commission. Mr. Goehring told the truth as best he knew it, made no effort to conceal or withhold facts or documents, and was substantially correct on material matters even if he was terse. Documentary evidence of prior disclosure, moreover, negates any inference that he intended to withhold or conceal

information. See supra, ¶¶ 20-24. As Mr. Goehring openly acknowledged at the La Star hearing, he could have been more careful to make his meaning clear in all respects. TDS/USCC Ex. 7, Tab F, pp. 21-22. Although this imprecision may have raised a question about his candor, there is now on this record no genuine issue of intentional misrepresentation or an attempt on his part to mislead the Commission.

3. Statements and Activities of Mark Krohse

115. Mark Krohse, an Accounting Manager at USCC during the La Star proceeding who continues to hold that position today, submitted a declaration in the La Star proceeding. TDS/USCC Ex. 8, ¶¶ 1-2 & Tab N. He later testified at the hearing. Id. Tabs O and R. The Bill of Particulars questions whether Mr. Krohse's declaration fully and accurately described the extent of his involvement in the La Star application.^{92/} In addition, the Bill of Particulars questions whether Krohse was candid at the La Star hearing in answering "yes" when asked whether he had included in his testimony "the sum total of things you've done for La Star."^{93/}

^{92/} B/P, p. 14. The Bill of Particulars raises the same question about deposition testimony given by Mr. Krohse in July 1990. Id. p. 8.

^{93/} Id. at 25.

116. At his July 1990 deposition, Mr. Krohse disclosed that his work on behalf of La Star consisted of (a) preparing La Star's proposed budget, TDS/USCC Ex. 8, Tab L, pp. 8, 10, 18-19, 21, 29-31, 34, 47-55, 71; (b) processing La Star cell site options, id. at 8-9, 11-12, 14-17, 21, 23, 32, 34; and (c) involvement in the preparation and filing of La Star's 1988 and 1989 federal tax returns, id. at 64-65, 75-76. He also testified at his deposition in the La Star proceeding that he had been the person at USCC responsible for processing USCC's payment of legal, engineering, and other expenses incurred by La Star. TDS/USCC Ex. 8, Tab L, pp. 23, 36-39, 45, 63. Prior to the deposition, at least 27 documents reflecting Mr. Krohse's activity in La Star matters had been turned over to opposing counsel in response to discovery requests. TDS/USCC Ex. 1, ¶ 25 and Tab F.

117. The questions in the Bill of Particulars concerning Mr. Krohse's candor in describing his involvement with La Star are not based on any suggestion that his involvement went beyond the involvement set forth in his deposition or the documents that were produced. Rather the candor issue is based on a comparison between that involvement and Mr. Krohse's declaration submitted in the La Star proceeding in August 1990. That declaration in its entirety stated:

I am Accounting Manager for United States Cellular Corporation. I am not a member of the La Star Cellular Telephone Company ('La Star') Management Commit-

tee. All duties that I have performed for La Star have been done at the request of and under the direction of La Star's attorney, Arthur V. Belendiuk. In this capacity, I was involved in processing payments for renewals of La Star's cell site options. Also at the request of Mr. Belendiuk, I prepared a model budget for La Star, based on information provided by Mr. Belendiuk and La Star's consultants. I also forwarded a request from SJI Cellular, Inc. to Telephone and Data Systems, Inc. to prepare tax returns for La Star. Any work I performed was approved by La Star's attorney or SJI Cellular, Inc.

118. At the La Star hearing, Mr. Krohse answered "yes" to the question whether he had included in his testimony "the sum total of things you've done for La Star." TDS/USCC Ex. 8, Tab O.

119. Although Mr. Krohse's declaration did not include all the details of each of his activities he had done on La Star, he believed that he had identified all of the material tasks he had performed. Neither La Star's counsel, with whom he had worked in providing the declaration, nor USCC's counsel, advised him that his declaration needed to be as detailed as his deposition testimony had been, or that the declaration was deficient or misleading in any respect. TDS/USCC Ex. 8, ¶¶ 16-18. Mr. Krohse would have included more information in the declaration if he thought it was necessary. Id. He had no intent to withhold facts from the Commission, and did not think

he had any reason to withhold any facts. TDS/USCC Ex. 8, ¶ 18.^{24/}

120. The record in this proceeding demonstrates that Mr. Krohse's testimony in the La Star proceeding was candid and substantially correct in all material respects. The only activity he undertook that was not mentioned in his declaration was his processing of all of La Star's bills. This activity was already a matter of record, and Mr. Krohse therefore clearly did not intend to conceal it from the Commission.

E. References to SJJ's Activities

121. The Bill of Particulars questions whether certain statements made to the Commission in La Star by Donald Nelson and Mark Krohse about SJJ were intended to overstate or exaggerate the nature and extent of SJJ's role in the joint venture. As discussed below, the record of this proceeding demonstrates that the statements at issue were not intended to mislead the Commission.

^{24/} This explanation is corroborated, not contradicted, by other evidence. USCC's attorney, Herbert D. Miller, Jr., confirms that he reviewed Mr. Krohse's declaration and, because he believed that it was candid, did not advise Mr. Krohse that there was any problem with it. TDS/USCC Ex. 10, ¶9. Mr. Krohse, therefore, would have had no reason to think that the declaration was misleading or deficient.

1. Donald Nelson About SJI.

122. Donald Nelson made the following statements about the role of SJI in La Star's operation and governance:

JUDGE CHACHKIN: Has anyone else been involved in day-to-day management managing the affairs of La Star?

MR. NELSON: The Brady's, I'm sure, and the SJI people have.

JUDGE CHACHKIN: What do you mean by day-to-day management? What have the Brady's done as far as day-to-day management is concerned, when the next sentence says that you -- what you've been involved in up to now is litigious in nature. So, what day-to-day management have the Brady's been involved in?

MR. NELSON: I don't know.^{95/}

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The Management Committee discussed the various options and unanimously agreed to follow a settlement plan proposed by Sinclair H. Crenshaw, a member of the Management Committee, appointed by SJI Cellular.^{96/}

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All services provided by USCC to or on behalf of La Star were technical in nature and were provided at the specific request of SJI Cellular or the Management Committee, either directly or through La Star's counsel.^{97/}

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It is now my understanding that Mr. John Brady, Jr. has been proposed as La Star's General Manager since

^{95/} B/P, p. 18, quoting Tr. 1350-1351.

^{96/} B/P, p. 12, quoting August 1990 Declaration of H. Donald Nelson, pp. 3-4.

^{97/} B/P, p. 12, quoting August 1990 Declaration of H. Donald Nelson, p. 4.

1983, having been so designated in its original 1983 application and again in its 1987 amendment.^{28/}

The record now supports only a finding that Mr. Nelson did not intend to mislead the Commission by these statements.

123. As an initial matter, the record leaves no doubt that Mr. Nelson honestly believed that SJI, not USCC, controlled La Star. See supra, Section IVB. Moreover, Mr. Nelson's specific statements do not evidence intentional deceit in any event. First, Mr. Nelson acknowledges that he incorrectly assumed that the Bradys were involved in day-to-day management of La Star. He explains that because, in his mind, he was not involved in the day-to-day management of La Star, he assumed -- without actually knowing -- that the Bradys must have been involved in such management. TDS/USCC Ex. 2, ¶ 67.^{29/} Although that assumption may have been mistaken, there is no evidence that the mistake was anything but an honest assumption on Nelson's part given what he did know about the operation of La Star. This is confirmed by the use of the phrase "The Brady's,

^{28/} B/P, p. 13, quoting August 1990 Declaration of H. Donald Nelson, p. 5. On the same general point, the Bill of Particulars also cites certain oral testimony by Nelson at the La Star hearing. B/P, pp. 18, 20-23.

^{29/} Mr. Nelson believed that the Bradys were in control of La Star and was aware that they received correspondence and telephone calls from La Star's counsel, Arthur Belendiuk. See supra, Sections IIIA & IIIB.

I'm sure, . ." followed quickly by his candid indication that he did not know what they had done.

124. Second, with respect to the settlement plan to which Nelson referred in the second statement quoted above, Mr. Brady and Mr. Crenshaw both confirm that it was Mr. Crenshaw of SJI who proposed the plan that the La Star principals adopted as their position on settlement. TDS/USCC Ex. 3, ¶ 21; TDS/USCC Ex. 4, ¶10. There is no evidence to the contrary, and Mr. Nelson's testimony on this point was accurate.

125. With respect to the reference to requests for assistance made to USCC directly by SJI, the direct request Mr. Nelson had in mind was SJI's request that USCC complete La Star's income tax forms. TDS/USCC Ex. 2, ¶ 75. Documentary evidence confirms that request was in fact made directly to Nelson by Mr. Crenshaw. TDS/USCC Ex. 2, Tab K. Mr. Nelson honestly believed that he was providing one example of what he believed he had truthfully identified as a limited type of occurrence.

126. Finally, the Bill of Particulars contrasts Mr. Nelson's deposition testimony, where he testified that he was unaware of the identity of La Star's general manager, TDS/USCC Ex. 2, Tab I, pp. 1435-37, 1450-52, with his later written testimony that "[i]t is now my understanding that Mr. John

Brady, Jr. has been proposed as La Star's General Manager since 1983, having been so designated in its original 1983 application and again in its 1987 amendment." TDS/USCC Ex. 2, Tab T at 6; Bill of Particulars at 13, 20-23.^{100/} Mr. Nelson was not aware of this proposal when he first testified at his deposition. See TDS/USCC Ex. 2, ¶ 79. His written and oral testimony in the La Star proceeding made clear that the basis for his understanding that Mr. Brady had been proposed as the general manager was his communication with counsel. Indeed, his written testimony specifies that he is "now" aware of that fact. Because USCC was not a partner in La Star until 1987, Mr. Nelson had to be told of this event, which occurred in 1983.

2. Mark Krohse about SJI.

127. The following statements by Mark Krohse about SJI are in question:

The request [for the 1988 and 1989 Federal] tax return[s] was sent to me by someone from Lafourche Telephone Company [SJI]. The TDS tax department completed the return and sent it in.^{101/}

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^{100/} There is no question that this testimony is substantively accurate because Mr. Brady in fact was proposed as La Star's general manager. TDS/USCC Ex. 14, p. 247.

^{101/} B/P, p. 8, quoting July 1990 deposition testimony of Mark Krohse, Dep. Tr. 65.

I also forwarded a request from SJI Cellular, Inc. to Telephone and Data Systems, Inc. to prepare tax returns for La Star.^{102/}

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Any work I performed was approved by La Star's attorney or SJI Cellular, Inc.^{103/}

As discussed below, the record compels a finding that Mr. Krohse did not intend to mislead the Commission by these statements.

128. With respect to the La Star tax returns, Mr. Krohse has explained his statements concerning the preparation of these returns. In 1989, he testified that he was asked to complete federal tax returns for La Star. He received one request from Arthur Belendiuk, La Star's attorney. Later, USCC's Donald Nelson forwarded to him a similar request that SJI's Sinclair Crenshaw had sent to Mr. Nelson in June 1989 along with an IRS notice. Mr. Krohse in turn forwarded the IRS materials to TDS's tax department with the request that they complete and file the return. In December 1989, he received from Allison Compeaux at SJI, who he understood to be Mr. Crenshaw's secretary, a fax cover sheet and IRS delinquency notice relating to the 1988 return. That, too, he forwarded to TDS's tax department. At least twice, he spoke with Allison Compeaux at SJI about the tax matter. TDS/USCC Ex. 8, ¶ 12.

^{102/} B/P, p. 14, quoting August 1990 Declaration of Mark Krohse, p. 1.

^{103/} Id.

129. Mr. Krohse's reference to a request from SJI was a reference to Mr. Crenshaw's request to Mr. Nelson and to Mr. Krohse's own related communications with Mr. Crenshaw's secretary, Ms. Compeaux. Id. ¶ 16. That explanation is corroborated by documentary evidence showing that Mr. Crenshaw had sent such a request to Mr. Nelson and that Mr. Krohse did communicate with Mr. Crenshaw's secretary on the matter. TDS/USCC Ex. 8, Tabs I and J. The record contains no evidence to the contrary.^{104/}

130. When Mr. Krohse referred to approval of his work by La Star's attorney "or SJI Cellular, Inc.," he was referring to the tax preparation work which SJI had asked USCC to handle. He meant simply that SJI had approved USCC's handling that work, which he thought was self-evident from the fact that SJI had made the request. TDS/USCC Ex. 8, ¶ 17. That explanation is confirmed by the record developed in this proceeding.

^{104/} Mr. Krohse notes that his July 1990 deposition testimony was inaccurate insofar as it indicated that the TDS tax department had signed both the 1988 and the 1989 La Star returns. In fact, the TDS tax department had signed the 1988 return, whereas Mr. Krohse himself had signed the 1989 return. In reviewing his July 1990 deposition testimony today, Mr. Krohse states that he believes that either he understood the question to refer just to the 1988 return, or he had forgotten that it was he who had signed the 1989 return. He explains that he signs more than a hundred tax returns in a typical year. TDS/USCC Ex. 8, ¶ 14. No reason appears in the record not to credit this explanation. Nor is there any apparent motive for Mr. Krohse to have tried to mislead anyone into thinking that TDS rather than he had signed one of the returns.

131. In light of the foregoing, there remains no genuine issue as to the candor of Mr. Krohse's references to the involvement of SJI in his statements in the La Star proceeding. Those statements were accurate in all material respects.

F. Statement that La Star's Rates Were "Cost-Based"

132. The Bill of Particulars questions the candor of a statement made by or on behalf of La Star that described the applicant's proposed rates and charges to system subscribers as "cost-based." The statement was made first in La Star's original 1983 application and was reiterated in the October 1987 Amendment:

These goals [of La Star's proposed rate structure] are served by a cost-based tariff that will encourage full utilization of the wide range of the cellular system's capabilities.^{105/}

The Bill of Particulars cites the same statement carried forward in La Star's direct written case under the declaration of Mark Krohse, submitted in September 1990.^{106/}

133. In 1987, Mark Krohse was asked to assist La Star's attorney Arthur Belendiuk in developing an updated budget and schedule of charges. TDS/USCC Ex. 8, ¶ 7. In developing

^{105/} B/P, p. 3, quoting 1987 Amendment, Exhibit 1-7, p. 1.

^{106/} B/P, p. 15, quoting La Star Exhibit 10, pp. 1, 5.

the budget, Mr. Krohse relied in part on a computer budget model that USCC used to create budgets for its own cellular systems. The computer budget model was a LOTUS program, into which several variables were input to create a budget for a specific market. The drivers for the model included the projected number of system customers and projected churn rate, projected minutes of usage per month, the costs associated with the system, the rates charged to customers, and the number of system employees. Id. ¶ 8.

134. Mr. Krohse testified here that the proposed subscriber charges set forth in the updated budget were developed by, first, utilizing the projected costs of the system and determining, based on those costs, what rates would yield a reasonable return over time. Then, because the cellular industry is very price competitive, he compared the rates used in the budget model with rates that were being currently listed for the New Orleans market in a cellular price and marketing letter. He conducted that comparison to make sure that the rates input in the budget model were not out of line with what cellular operators were then actually charging in the New Orleans MSA. Thus, the proposed rates in the La Star budget were a combination of the budget model projections and the pricing guide. Mr. Krohse's testimony is confirmed by a printout from his computer of the budget as developed in October 1987. Id. at ¶ 9 and Tab D.

135. In August 1990, Mr. Krohse was asked by La Star's counsel to sponsor a hearing exhibit showing La Star's schedule of proposed charges. The exhibit was drafted by counsel and contained the proposed subscriber rates specified in the budget that Krohse had helped develop in 1987. After reviewing the draft exhibit, Mr. Krohse discussed it with Mr. Belendiuk. Among other things, they discussed the statement in the draft that the proposed rates were "cost-based." Mr. Krohse explains that he wanted to make certain that "cost-based" was the proper terminology. After discussing it with Mr. Belendiuk, he was satisfied that this was appropriate terminology to describe the proposed rates. The "Schedule of Proposed Charges" and Mr. Krohse's accompanying declaration were submitted in the hearing as La Star Exhibit 10. Mr. Krohse avers that he did not know at the time, and still does not know today, whether there was some particular reason for La Star to point out that its proposed rates were cost-based. If that helped La Star's chances with its application, he was unaware of it. Id. at 20.

136. Mr. Krohse's explanation satisfactorily demonstrates that the description of La Star's proposed rates as "cost-based" had a reasonable basis and was made in good faith. In developing the budget and rate schedule, Mr. Krohse did factor in the estimated costs of the system. Before he formally certified the schedule of charges to the Commission, he assured himself, by consulting with La Star's counsel, that "cost-based"

was the proper terminology for him to use. In any event, he had no motive to mislead the Commission because he knew of no reason why it would be advantageous for La Star to claim that its rates were cost-based. This explanation is supported by the record and no genuine issue remains as to the candor of that statement.

V. CONCLUSION

137. Summary decision resolving a misrepresentation or candor issue is appropriate under Section 1.251 of the Commission's Rules where there is no genuine issue as to any material fact for determination at the hearing. Since deceptive intent is the sine qua non of misrepresentation or lack of candor, no genuine issue of material fact remains to be tried if there is no evidence of deceptive intent. The absence of deceptive intent may be established by uncontradicted affidavits and sworn testimony of the principals whose candor is in question.^{107/}

^{107/} Ramon Rodriguez, 4 FCC Rcd. 6817, 6817-18, ¶ 4 (Rev. Bd. 1989), rev. denied, 5 FCC Rcd. 4041 (1990). The Court of Appeals affirmed this aspect of the Rodriguez decision in David Ortiz Radio Corp. v. FCC, 941 F. 2d 1253, 1258 (D.C. Cir. 1990). See also Richard Bott II, 9 FCC Rcd. 514 (ALJ 1994) (resolving misrepresentation/candor issue in applicant's favor by summary decision); WXBM-FM, Inc., 6 FCC Rcd. 7356 (ALJ 1991) (same); Charles B. Shafer, 5 FCC Rcd. 3029 (ALJ 1990) (same); Mexican-American Communications Entertainment Broadcasting Group, 5 FCC Rcd. 3859 (ALJ 1990) (same).

138. Here, in response to the Bureau's comprehensive Bill of Particulars and the HDO, TDS and USCC have submitted sworn testimony from eleven individuals, specifically including those whose candor had been questioned -- Donald Nelson, Richard Goehring, and Mark Krohse. The uncontradicted sworn testimony of those persons is credible, and much of that testimony is independently corroborated by the testimony of other witnesses and by contemporaneous documents in the record. TDS and USCC thus have established that none of USCC's principals had any intent to misrepresent facts or mislead the Commission in statements they made in the La Star proceeding.

139. A limited number of the statements made to the Commission by the principals in La Star were inaccurate, and others should have been qualified or supplemented by the principals with additional information to make their meaning clear. Although this is regrettable, the evidence demonstrates that the USCC principals were candid in their testimony. Because the record demonstrates beyond dispute that there was no deceptive intent, there was no misrepresentation or lack of candor and hence no violation of Section 1.17 of the Rules.

140. With no genuine issue of material fact remaining to be tried, summary decision is warranted (a) resolving Issue 1 in favor of USCC, (b) finding under Issue 2 that TDS and USCC are fully qualified to hold the cellular authorization for the